

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: January 29, 2004

Opposition No. **91152940**

SINCLAIR OIL CORPORATION

v.

SUMATRA KENDRICK

Andrew P. Baxley, Interlocutory Attorney:

On September 5, 2003, opposer filed its second motion to compel in this proceeding.¹ Although no response thereto is of record, the Board, in its discretion, declines to grant the motion as conceded and instead will decide it on its merits. See Trademark Rule 2.127(a).

The Board finds initially that opposer made a good faith effort, as required by Trademark Rule 2.120(e)(1), to resolve the parties' discovery dispute prior to filing its second motion to compel,² but notes that opposer did not include a copy of the interrogatories at issue, as required by Trademark Rule 2.120(e)(1), with such motion. The Board

¹ Opposer's first motion to compel (filed August 13, 2003) was denied without prejudice in an August 28, 2003 order for being well in excess of the Board's twenty-five page limit for briefs on motions. See Trademark Rule 2.127(a).

² The parties, however, are urged to review TBMP Section 414 (2d ed. June 2003) and cases cited therein regarding the discoverability of various matters in Board inter partes proceedings.

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further notes that opposer included only applicant's responses to interrogatory Nos. 1-10 from her first set of interrogatory responses with its second motion to compel. In the interest of moving this proceeding forward, however, the Board will consider opposer's second motion to compel based on the interrogatories as set forth therein and applicant's supplemental responses thereto.

With regard to applicant's objections in the interrogatories at issue, the Board notes that applicant is an individual who is representing herself herein and who is apparently not well-versed in legal parlance. The Board attributes any lack of artfulness in her responses to her inexperience in legal proceedings and, in view of the fact that applicant served timely responses to opposer's interrogatories and promptly supplemented those responses, finds that applicant has not forfeited the right to object on the merits thereto.³ See TBMP Section 403.03. The Board further notes that, except as noted in this order, opposer's complaints about those responses go to the probative weight to be accorded thereto.

Turning to the individual responses at issue, opposer's interrogatory No. 18 seeks information regarding applicant's

³ However, applicant's objections on the basis that opposer has served more than twenty-five interrogatories is not-well taken. A party is allowed to serve as many as seventy-five interrogatories, including subparts, in a Board inter partes proceeding. See Trademark Rule 2.120(d)(1).

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expenditures in identifying, creating, adopting and promoting her involved mark. The Board construes applicant's supplemental response as stating that, to the best of her knowledge, there were no such expenditures and finds that such response is acceptable.

Opposer's interrogatory No. 10 seeks information regarding any cease and desist letters that she has sent or received with regard to her involved mark. The Board construes applicant's second response as stating that the only such letters that she has received were from opposer and finds that such response is incomplete.⁴ Applicant is directed to supplement her response by stating whether she has sent any cease and desist letters with regard to her involved mark.

Opposer's interrogatory No. 11 seeks information regarding the identity of applicant's employees and persons connected with her who have knowledge of applicant's involved mark as used in connection with applicant's goods and/or services. The Board construes applicant's second response as stating that she has no employees and knows of no one other than herself who has any such direct knowledge and finds that such response is acceptable.⁵

⁴ Inasmuch as opposer sent the letters in question, their contents should be readily obtainable from opposer's own records.

⁵ The Board further notes that applicant states in response to interrogatory No. 32 that she is a sole proprietorship and that

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Opposer's interrogatory Nos. 23 and 24 seek information regarding any trademark searches that applicant conducted with regard to her involved mark. Taken together, the Board construes applicant's responses thereto as stating that she did not conduct a trademark search with regard to her involved mark and finds that this response is acceptable.

Opposer's interrogatory No. 31 seeks information regarding documents that establish her dates of first use of her involved mark.⁶ The Board construes applicant's supplemental response as meaning that she has no documents that establish such dates and finds that this response is acceptable.⁷

In view thereof, opposer's motion to compel is hereby granted with regard to interrogatory No. 10, but is otherwise denied. Applicant is allowed until **thirty days** from the mailing date of this order to serve upon opposer a supplemental response to said interrogatory.

there are no other persons with knowledge or information regarding her business.

⁶ The Board notes that applicant states throughout her responses that she has not yet used the involved mark in commerce.

⁷ In any event, the Board notes that opposer's pleaded Registration Nos. 929749 and 929750 were both issued on February 22, 1972, i.e., twenty-nine years before the filing date of applicant's involved application. Accordingly, priority will not be at issue herein so long as opposer submits status and title copies of its pleaded registrations during its testimony period. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

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Nonetheless, applicant is reminded that a party that has responded to a discovery request has a duty to supplement or correct that response. See Fed. R. Civ. P. 26(e). Applicant is also reminded that, when a party, without substantial justification, fails to disclose information required, or fails to amend or supplement a prior response, as required, that party may be prohibited from using as evidence the information not so disclosed. See Fed. R. Civ. P. 37(c)(1).

The parties are allowed until thirty days to file with the Board a fully executed protective agreement, failing which the board will impose its standardized form protective agreement on the parties.⁸

Opposer's motion (filed August 13, 2003) to extend discovery is hereby granted as conceded. See Trademark Rule 2.127(a). Proceedings herein are resumed, with discovery and trial dates reset as follows:

DISCOVERY PERIOD TO CLOSE:	5/3/04
Plaintiff's thirty-day testimony period to close:	8/1/04
Defendant's thirty-day testimony period to close:	9/30/04
Fifteen-day rebuttal testimony period to close:	11/14/04

⁸ The standardized form protective agreement is available online at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

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In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.